**REMARKS**

Claims 1-28 are pending and under consideration. Reconsideration is respectfully requested. Applicants request entry of this Rule 116 Response and Request for Reconsideration because arguments herein should put claims in a condition for allowance or in a better condition for appeal.

## I. Current Action Is Incomplete

Applicants respectfully submit that the current Office Action incomplete since the Examiner has not responded to all of Applicants' arguments traversing the rejections from the previous Office Action mailed November 16, 2006 that were presented in the previous Amendment filed February 16, 2007 ("previous Amendment").

In the previous Amendment, Applicants traversed the rejections of claims 1-13, 15, 18, and 20-24 under 35 U.S.C. §103(a) as being unpatentable over Namekawa (U.S.P. 6,237,027) in view of Trompower et al. (U.S.P. 6,128,512) arguing, in part, that recited features are not taught by an *arguendo* combination of Namekawa with Trompower since Trompower teaches a limitation of "transmission parameters" that are dynamically modified to parameters such as chipping rate and that such modification is limited to a teaching of a modification based on distance between the transmitter and receiver and noise conditions.

Further, Applicants argued that Trompower teaches a modification is performed while performing an adjustment and the wireless system only performs such adjustment between a particular mobile terminal and a base station. That is, one of understanding in the art, would not have modified Namekawa using the limited methodology of Trompower to teach a dynamic determining of, for example, a "message destination."

In the current Office Action, the Examiner repeats his assertions in support of the rejection and in an attempt to establish *prima facie* obviousness but does not completely address the Applicants' argument.

### Summary

Accordingly, Applicants respectfully request that the finality of the current Office Action be withdrawn and another action issued including a complete response and with the due date accordingly reset.

## II. Traverse of §102 and 103 Rejections

### Item 7: Rejection of claim 19 under 35 U.S.C. 102(e) as being anticipated by Namekawa

In item 7 of the Office Action, the Examiner rejects claim 19 under 35 U.S.C. §102(e) as

being anticipated by Namekawa. In item 9 of the Office Action in the section entitled "Response To Arguments," the Examiner cites Namekawa col. 6, lines 34-48, as teaching "arrival detection and the recording the status of the detection." (Action at page 29, lines 5-6). The rejection is traversed.

As set forth in MPEP §706.02 entitled Rejection on Prior Art, anticipation requires that the reference must teach every aspect of a claimed invention.

Applicants submit that Namekawa does not support an anticipatory-type rejection by not describing features recited in claim 19.

Applicants submit that Namekawa does not teach a method "utilized in an information terminal provided with communication means for transmitting and receiving text messages among mobile terminals or other information terminals via communication lines and servers ... (including) detecting and reporting to the servers an operational status of the each transmission means including at least a change of status of a connection with the communications lines (emphasis added), as recited by claim 19. "

> By contrast, Namekawa merely teaches:
>
>> computer 5 records the failure of connecting on the electronic mail of which the arrival was informed and the time tried to connect. The user can judge based on the record whether he is not within the receivable area of the base station 8 or any trouble occurs in the computer 5. . . . when the connection has succeeded, the computer 5 records that the connection has succeeded on the electronic mail of which the arrival was informed on the hard disk drive 14 as the communication record.

(See, for example, col. 6, lines 34-48).

That is, Namekawa does not teach an information terminal reporting to servers a change in operational status, but merely a computer recording a failure of connecting or a success of connecting. Such a failure or success is recorded for the "user."

**Summary**

Since features recited by claim 19 are not taught by the Namekawa the rejection should be withdrawn and claim 19 allowed.

**Item 2:  Rejection of claims 1-13, 15, 18, and 20-24 under 35 U.S.C. §103(a) as          being unpatentable over Namekawa in view of Trompower**

**Item 5:  Rejection of claims 27-28 under 35 U.S.C. §103(a) as being unpatentable over Namekawa and Ishikura et al. (U.S.P. 6,052, 565) in view of Lazaridis et al. (U.S.P. 6,219,694)**

In item 2 of the Office Action, the Examiner rejects claims 1-13, 15, 18, and 20-24 under 35 U.S.C. §103(a) as being unpatentable over Namekawa in view of Trompowerl. (Action at

pages 2-19). In item 5 of the Office Action, the Examiner rejects dependent claims 27-28 under 35 U.S.C. §103(a) as being unpatentable over Namekawa and Ishikura in view of Lazaridis et al., (U.S.P. 6,219,694). (Action at pages 25-26). The rejection is traversed.

Applicants submit that features recited by each of the independent claims are not taught by the cited art even in an *arguendo* combination.

Independent claim 1, for example, recites a text messaging system including:

a) " . . . means having different transmission modes provided in each of the information terminals for transmitting to the servers text messages addressed to other of the information terminals (emphasis added);" and

b) "reception means provided in the information terminals for receiving from the servers a text message from other of the information terminals (emphasis added);" and

c) status detection means provided in the information terminals for detecting and reporting to the servers an operational status of the each transmission means including at least a change of status of the connection with the communication lines (emphasis added);" and

d) reception means provided in the servers for receiving text messages from any one of the information terminals; (emphasis added);" and

e) status administration means provided in the servers for storing, per user of any one of the information terminals, the operational status, including the change of status, of the each transmission means of each information terminal reported from said status detection means; (emphasis added);" and

f) determining means provided in the servers for referring to the operational status, including the change of status, stored by the status administration means of an information terminal that is a destination of the text message received from the information terminal, and for dynamically determining a message destination and a transmission means and transmission mode for the received text messages according to the stored operational status and change of status; (emphasis added);" and

g) transmission means provided in the servers for transmitting text messages received from the information terminals to the destination information terminal according to the dynamically determined transmission mode using the dynamically determined transmission means (emphasis added)." Independent claims 2, 15, 21, and 23 have similar recitations.

Independent claim 12 recites a system including "... means provided in the first server for gathering and storing per user of the information terminals, an operational status, including the change of status, of the each transmission means from each information terminal; . . . means

14

provided in the <u>second server</u> for receiving text messages from the mobile terminal or the information terminal; . . . means provided in the <u>second server</u> for obtaining from the <u>first server</u> operational status, including the <u>change of status</u>, <u>of the information terminal</u> that is a destination of the text message received from the information terminal, and for <u>dynamically determining</u> a transmission mode for received text messages according to the obtained operational status and change of status; and . . . means provided in the <u>second server</u> for transmitting text messages received from the mobile terminal or the information terminal to another mobile terminal or a destination information terminal according to the<u>dynamically determined transmission mode</u> <u>using the dynamically determined transmission means</u>. (emphasis added).

Independent claim 18 recites a method including "detecting and reporting <u>to the server</u> an operational status of each transmission mean . . . determining a transmission mode for the received text messages according to the stored operational status and <u>change of status of the</u> <u>information terminal</u>; and transmitting and receiving text messages <u>by way of the server</u> between the mobile terminal and the <u>destination information terminal</u>, or between the mobile terminal and another mobile terminal, wherein the system includes a plurality thereof, or between the information terminal and the destination information terminal, wherein the system includes a plurality thereof, <u>according to the dynamically determined transmission mode</u> (emphasis added)." Independent claims 20 has a similar recitation.

Applicants submit that features recited by each of the independent claims are not taught by the cited art even in an *arguendo* combination.

As discussed above in traversing the rejection of claim 19, Namekawa does not teach <u>reporting to servers</u> a change in operational status, as recited by each of the independent claims, as the Examiner asserts.

Accordingly, even a combination of the cited art does not teach reporting to servers a change in operational status.

The Action concedes that:

> Namekawa fails to teach the limitation further including dynamically determining a transmission means.

(Action at page 4, lines 8-9).

The Examiner asserts:

> Trompower teaches the use of dynamically modifying data transmission parameters . . . It would have been obvious . . . to modify Namekawa in view of Trompower to dynamically determine a transmission means. One would be motivated to do so because it optimizes overall system performance.

15

(Action at page 4, lines 12-17).

In item 9 of the Office Action in the section entitled "Response To Arguments," the Examiner further asserts:

> [O]ne cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references . . . Dynamically determining a message destination is found in Namekawa. The combination is in regards to dynamically determining a transmission means.

(Action at page 28, lines 9-14).

Applicants point out however, that in *KSR International,* the U.S. Supreme Court held that in determining obviousness, one also "must ask whether the improvement is more than the predictable use of prior art elements according to their established functions (emphasis added)" slip op. 13, 82 USPQ2d at 1396.

Furthermore, it is necessary "to determine whether there was an apparent reason to combine the known elements in the fashion claimed" slip op. 14, 82 USPQ2d at 1396.

The Supreme Court further affirmed the *KSR International* holdings in *In re Kahn,* 441 F. 3d 977, 988 (CA Fed. 2006), stating: "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (Emphasis added).

Applicants submit that the Examiner's assertions in support of a proposed combinations "are merely conclusory and without articulated reasoning." The Examiner is, in essence, asserting the references could be modified in any manner whatsover - -which is clearly not the case and not supported by KSR.

**Summary**

Since features recited claims 1-13, 15, 18, 20-24 and 27-28 are not taught by even an arguendo combination of the art relied on by the Examiner, and *prima facie* obviousness is not established, the rejection should be withdrawn and claims 1-13, 15, 18, 20-24, and 27-28 allowed.

**Items 3-4:   Rejections Of Claims 14, 16-17 and 25 under 35 U.S.C. §103(a) as being unpatentable over Namekawa in view of combinations of Trompower and Ishikura**

In items 3 and 4 of the Office Action, the Examiner rejects claims 14, 16-17 and 25 under 35 U.S.C. §103(a) as being unpatentable over Namekawa in view of combinations of Trompower and Ishikura. (Action at pages 20-24). The rejections are traversed.

Claim 14 recites in an information terminal provided with communication means for

transmitting and receiving text messages among mobile terminals or other information terminals via communication lines and servers responsive to said communication means, a text messaging device comprising:

a) " . . . means having different transmission modes for transmitting to the servers text messages addressed to the mobile terminals or to the other information terminals;"

b) "reception means for receiving from the servers text messages from the mobile terminals or from the other information terminals;" and

c) "status detection means for detecting and reporting to the servers an operational status of the each transmission means of the information terminals including at least a change of status of a connection with the communications lines,"

e) "wherein the detecting the change of status further comprises: detecting a disconnection of one of the each transmission means, and detecting whether a user is using one of the information terminals." Claims 16 and 17 have similar recitations.

Dependent claim 25 recites a system "wherein the change of status that is detected and reported is a change from a connected status with the Internet to a disconnected status or change in a use of an information terminal by a user."

Applicants submit that features recited by claims 14, 16-17, and 25 are not taught by even an *arguendo* combination of the cited art.

The Action concedes Namekawa in view of Trompower does not teach:

> detecting and reporting a change of status of a connection, wherein the detecting the change of status further comprises: detecting a disconnection of one of the each transmission means, and detecting whether a user is using one of the information terminals.

(Action at page 20, line 20 - page 21, line 2).

Applicants submit that *prima facie* obviousness is not established since an *arguendo* combination does not teach "detecting and reporting <u>to the servers</u> an operational status of the each transmission means of <u>the information terminals</u> including at least a change of status of a connection with the communications lines, wherein the detecting the change of status further comprises: detecting a disconnection of one of the each transmission means, and <u>detecting whether a user</u> is using one of the information terminals (emphasis added)," as recited by claim 14, for example.

By contrast, Ishikura merely teaches:

> Note that FIG. 21 shows a list of the relationship among the battery voltage values $V_{cc}$, their functions, and status change report data (L7, L8, L9). Note that other bits L0 to L6 of the status change report data are respectively

assigned to <u>inform the personal computer</u> PC of L6: incoming call, L5: call disconnection, L4: system access errors, L3: successful connection, L2: call interrupt, L1: hand-off start, and L0: hand-off end.

(See, for example, col. 15, lines 60-67).

That is, Ishikura merely teaches a change of status is informed to a personal computer. The Examiner has shown articulated reasoning for an *arguendo* combination to teach a reporting to servers.

Applicants submit there is no reasonable chance of success to modify Namekawa with Trompower, in a manner as suggested by the Examiner since Trompower teaches a specific limitation of "transmission parameters" that are dynamically modified and a restriction on when such modification is made.

Applicants also submit that one of ordinary understanding in the art would not have modified Namekawa for a dynamic method of determining transmission means using the limited methodology of Trompower.

Applicants respectfully submit that the Examiner's assertions in support of a proposed combinations "are merely <u>conclusory</u> and without articulated reasoning."

Further, an *arguendo* combination of Namekawa and Ishikura and Trompower does not teach the detecting of a connected status with the Internet, as recited by claim 25.

**Summary**

Since features recited by claims 14, 16-17 and 25 are not taught by even an *arguendo* combination of the art relied on by the Examiner, and *prima facie* obviousness is not established, the rejection should be withdrawn and claims 14, 16-17 and 25 allowed.

<div align="center">CONCLUSION</div>

In accordance with the foregoing, it is respectfully submitted that all outstanding objections and rejections have been overcome and/or rendered moot, further, that all pending claims patentably distinguish over the prior art.

Thus, there being no further outstanding objections or rejections, the application is submitted as being in condition for allowance which action is earnestly solicited.

If the Examiner has any remaining issues to be addressed, it is believed that prosecution can be expedited by the Examiner contacting the undersigned attorney to discuss resolution of such issues.

If there are any underpayments or overpayments of fees associated with the filing of this

Amendment, please charge and/or credit the same to our Deposit Account No. 19-3935.

Respectfully submitted,

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